

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Human Resources	(2) MEETING DATE 10/1/2013	(3) CONTACT/PHONE Tami Douglas-Schatz/781-5959	
(4) SUBJECT Request to approve contracts with outside counsel firms, Coates and Coates, LLP, Smith Law Offices, APC and Porter Scott, to provide litigation support services to the County from February 1, 2013 through January 31, 2016.			
(5) RECOMMENDED ACTION It is recommended that the Board approve and direct the Chairperson to sign the contracts with Coates and Coates, LLP, Smith Law Offices, APC and Porter Scott, to provide litigation support services to the County from February 1, 2013 through January 31, 2016.			
(6) FUNDING SOURCE(S) Risk Management, ISF FC 409	(7) CURRENT YEAR FINANCIAL IMPACT \$900,000 budgeted for FY2013/14.	(8) ANNUAL FINANCIAL IMPACT Varies from year to year. See financial considerations for prior year actuals.	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____ ) <input type="checkbox"/> Board Business (Time Est. ____ )			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Emily Jackson			
(18) SUPERVISOR DISTRICT(S) - All			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Human Resources / Tami Douglas-Schatz

DATE: 10/1/2013

SUBJECT: Request to approve contracts with outside counsel firms, Coates and Coates, LLP, Smith Law Offices, APC and Porter Scott, to provide litigation support services to the County from February 1, 2013 through January 31, 2016.

## **RECOMMENDATION**

It is recommended that the Board approve and direct the Chairperson to sign the contracts with Coates and Coates, LLP, Smith Law Offices, APC and Porter Scott, to provide litigation support services to the County from February 1, 2013 through January 31, 2016.

## **DISCUSSION**

The County's Liability Program is one of several implemented by the Risk Management division of the Human Resources Department. The Liability Program has been established to manage risk from third party claims and lawsuits. A team made up of County Counsel, outside counsel, and a third party claims administrator (TPA) executes the liability program. This team is managed by a County Risk Management Analyst. To date, the County has engaged its TPA contractually, while relying on the non-contractual interaction between the TPA and outside counsel to govern the outside counsel relationship. This request seeks to enhance the relationship between the County and its outside counsel vendors by formalizing the relationship in a contract.

The team approach utilized by the County in the Liability Program is expeditious for reasons other than just optimal case management. The County is self insured for the first \$250,000 of liability losses. We purchase excess insurance through the California State Association of Counties Excess Insurance Authority (CSAC-EIA) for claims in excess of \$250,000 (our self-insured retention). The EIA is a member-directed insurance risk sharing pool to which 93% of counties belong. Pursuant to provisions in our Memorandum of Coverage for the General Liability Insurance Program with the EIA, expenses for claims administration and litigation costs can only be charged against the County's self-insured retention (SIR) if a non-county employee is used to perform these tasks. As such, it is cost effective to use outside counsel for this portion of the liability program work.

Historically, the County relied on a single, local law firm to handle a majority of its litigated cases. In 2009, the Human Resources Department recognized that additional program improvements could be achieved through enhanced litigation management. Through a Request for Qualifications process, we identified a pool of quality outside counsel firms, and assigned existing and new cases to pool attorneys based upon their areas of expertise. Additionally, Risk Management and County Counsel took a more active role in overseeing the claims and litigation management to contain costs and achieve consistent positions with regard to claims and litigation. Since 2009, claim frequency and costs have been reduced due to the following: overall economics, the success of the County's Loss Prevention Initiative, good program management, effective claims administration by our TPA, and favorable case outcomes. Claim frequency has been reduced to 83 claims from its claim inventory level of 126 in 2009. Along with reduced claim inventory, our litigated cases numbers have gone from 44 cases in 2009 down to 11 cases currently. With this new attorney pool arrangement and improved management, settlement costs and outside legal fees have been reduced substantially. Specifically, fees for outside legal services in 2012/13 have been reduced to \$458,858, from the 2008/09 level of \$1,074,930.

The Liability Program is funded through annual department charges. After the fiscal year has closed, a copy of the program loss and expense data is provided to the County's actuary, Bickmore and Associates. The actuary uses this data to evaluate the financial status of the Liability Fund and provide the County with recommendations for annual funding requirements.

An Internal Service Fund (ISF) has long been established for the financing of goods and services provided by Risk Management to other departments of the County on a cost-reimbursement basis. With the reduction in fees for legal services, in addition to a reduced number of litigated matters, the ISF fund balance has grown to a healthy level of \$6.4 million. The December 2012 actuarial review forecasted the program's liability for outstanding claims to be \$2,554,000 as of June 30, 2013. That translates into the program being funded at a 90% confidence level. This allowed for the reduction of liability charges to departments for FY 2013/14 by \$1 million.

In the past, the County has not had formal contracts with its outside counsel, due to the fact that the County engaged with outside counsel through the County's contractual relationship with the TPA. Risk Management has been improving and tightening up its Liability Management Program in recent years, evaluating potential best practices for implementation in our County. While our past practice of not having formal contracts was acceptable, we now assert that establishing contractual relationships with our outside counsel is a superior practice. The contracts provide stability for both the vendors and the County, and set forth expectations for a relationship during ongoing work, and afterwards, in the event that a vendor no longer works for the County. In addition, based on past experience, positive results from the enhanced claims and litigation management, and a pool of qualified outside counsel, it is in the County's best interest to retain the current attorney firms in the litigation pool through having formal executed contracts.

With documented success of a qualified litigation pool, we recommend that contracts be executed with the selected firms – Coates and Coates LLP, Smith Law Offices APC, and Porter Scott.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has reviewed and approved the contracts as to form and legal effect.

#### **FINANCIAL CONSIDERATIONS**

Outside counsel are paid on an hourly basis. Coates & Coates, LLP and the Smith Law Offices, APC bill at an hourly rate of \$200.00 per hour for attorney time, and \$100.00 per hour for paralegal time. Porter Scott bills at an hourly rate of \$205 per hour for partner attorney time, \$185 per hour for associate attorney time and \$95.00 per hour for paralegal time. Payment is made by the third party administrator, who in turn, seeks reimbursement from the County. The Liability Program is funded on a cost reimbursement basis. Similar to claim activity, litigated cases could rise or fall and the associated costs will fluctuate. Adequate funding is available in the Liability Fund for these expenses.

Expenses were at their highest in FY 2009-10, due to the cost of transferring cases from the single firm to the then new attorney pool. Since that time, the effective work of the outside counsel pool, good program management and a reduction in litigated matters have brought expenses down. The table below displays the County's actual costs for outside counsel over the past five years, and shows a significant and steady decrease in costs from a high in FY 2009-10:

<b>Fiscal Year</b>	<b>Outside Counsel Costs</b>	<b>\$ Change from Prior Year</b>	<b>% Change from Prior Year</b>
2008-09	\$1,074,930		
2009-10	\$1,262,524	\$187,594	17%
2010-11	\$870,432	(\$392,092)	(31%)
2011-12	\$542,037	(\$328,395)	(38%)
2012-13	\$458,858	(\$83,179)	(15%)

#### **RESULTS**

Outside counsel is an integral part of the Liability Program, and a critical component to the overall effort to protect County assets, which is critical to a prosperous and well-governed community. Approval of these contracts will formalize the County's relationship with outside counsel from February 1, 2013 through January 31, 2016, with options to renew by the Human Resources Director, for an additional term not to exceed two years.

## **ATTACHMENTS**

1. Coates and Coates Contract
2. Porter Scott Contract
3. Smith Law Offices Contract